

amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) “the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts.”

§ 884.105 Maximum total ACC commitment and project account (private-owner/PHA projects).

(a) *Maximum total ACC commitment.* The maximum total annual contribution that may be contracted for in the ACC for a project shall be the total of the Contract Rents plus any utility allowances for all the Contract units in the project, plus a fee for the regular costs of PHA administration. HUD-approved preliminary costs for administration (including administrative costs in connection with PHA activities related to relocation of occupants) shall be payable out of this total.

(b) *Project account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the 1937 Act, out of amounts by which the maximum ACC commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required Annual Contribution exceeds the maximum ACC commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum ACC commit-

ment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the 1937 Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) “the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts.”

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.106 Housing assistance payments to owners.

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the utility reimbursement jointly to the Family and the utility company or directly to the utility company. No Section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing, rather than Owner-occupied housing, for this purpose.

(b) *Vacancies during rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, in accordance with the procedure set forth in § 884.213(b): *Provided*, That the Owner: (1) Commenced marketing and otherwise complied with § 884.211(e), (2) has taken and continues to take all

feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD or the PHA, as the case may be.

(c) *Vacancies after rent-up.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; provided, however, That if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 884.115). The Owner shall not be entitled to any payment under this paragraph (c)(1) unless he: (i) Immediately upon learning of the vacancy, has notified HUD or the PHA, as the case may be, of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs (b) (2) and (3) of this section.

(2) If the Owner evicts an Eligible Family, he shall not be entitled to any payment under paragraph (c)(1) of this section unless the request for such payment is supported by a certification that: (i) He gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

(d) *Debt-service vacancy payments.* (1) If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may submit a claim to receive additional housing assistance payments on a semiannual basis with respect to the vacant unit in an amount equal to the

principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether the vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (d) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed.

(ii) The Owner has taken and is continuing to take the actions specified in paragraphs (b) (1), (2) and (3) or paragraphs (c)(1) (i) and (ii) and (c)(2) of this section, as appropriate.

(iii) The owner has demonstrated, in connection with the semiannual claim on a form and in accordance with the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the owner with revenues at least equal to the project costs incurred by the owner and that the amount of the payments requested is not in excess of the amount needed to make up the deficiency.

(iv) The owner has submitted to HUD or the PHA, as appropriate, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD or the PHA, as appropriate, may deny any claim for additional payments or suspend or terminate payments if it determines that, based on the owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he is entitled to payments from other

sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 884.115).

[41 FR 47168, Oct. 27, 1976, as amended at 42 FR 12983, Mar. 7, 1977; 43 FR 33880, Aug. 1, 1978. Redesignated at 45 FR 6909, Jan. 30, 1980; 49 FR 19947, May 10, 1984]

§ 884.108 Term of housing assistance payments contract.

(a) Except in the case of a Contract described in paragraph (b) of this section, the Contract shall be for an initial term of 20 years: *Provided*, That at the end of such Contract term and at the request of RHCDS, HUD may, subject to the availability of contract and budget authority, authorize the execution of a new Contract providing for a total Contract term of an additional 20 years.

(b) In the case of a Contract under which housing assistance payments are made with respect to a project owned by a State or local agency, the total Contract term may be equal to the term of such financing but may not exceed 40 years for any dwelling unit.

(c) If the project is completed in stages, the dates for the initial and the renewal terms shall be separately related to the units in each stage: *Provided, however*, That the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, may not exceed the overall maximum term allowable for any one unit, plus two years.

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 48 FR 12710, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 61 FR 13593, Mar. 27, 1996]

§ 884.108a Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each

family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.

(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.

(e) This section applies to all Contracts entered into pursuant to an Agreement executed on or after October 1, 1981, or entered into pursuant to an Agreement executed before October 1, 1981, but renewed or amended on or after October 1, 1984.

[49 FR 31284, Aug. 6, 1984]